

**Request for Mediation
September 2003 - August 2004**

DATE REQUEST RECEIVED		DISPUTE ISSUE(S)	FILED BY	OUTCOME
1	12/22/03	Teacher training Relationships	Parents	Agreement reached
2	1/30/04	FAPE	School	Parents declined – felt the issues had already been addressed
3	6/21/04	ESY	Parents	Parents reconsidered and later declined

**Requests for Due Process Hearings
September 2003 - August 2004**

DATE REQUEST RECEIVED		DISPUTE ISSUE	FILED BY	OUTCOME
1	6/07/04	Prior notice Access to records Lack of consent	Parents	In process
2	8/15/04	Placement	Parents	Mediation in process simultaneously with due process

DPI – Special Education Complaint Management Request History

	MEDIATION	COMPLAINTS	DUE PROCESS
SEPTEMBER 2003 – AUGUST 2004	3	10	2
SEPTEMBER 2002 – AUGUST 2003	1	33	4
SEPTEMBER 2001 – AUGUST 2002	6	15	3
SEPTEMBER 2000 – AUGUST 2001	4	14	5
SEPTEMBER 1999 – AUGUST 2000	5	16	4
SEPTEMBER 1998 – AUGUST 1999	5	4	6

DPI – SPECIAL EDUCATION
COMPLAINT SYNOPSES
SEPTEMBER 2003 – AUGUST 2004

Note: These summaries are intended to provide information in a greatly reduced format. All complaints are decided on their unique facts. Readers are encouraged to consult the Department or other advisors before applying the conclusions indicated below to another fact situation.

Complaint 1

Issues

1. Failure to implement IEP – removal of aide.
2. Failure to meet minimum requirements for evaluation.

Conclusion 1 for Issue 1

The school failed to implement Student’s IEP when it did not provide a paraprofessional aide in science class as called for in the “old” IEP, even though a new IEP was being developed that ultimately reduced the amount of aide assistance.

The student’s IEP came due for annual review in mid-September. The “old” IEP called for a paraprofessional aide in science class. The IEP team met four times between early September and early November to work on developing a new IEP. The new IEP was completed in early November. The new IEP called for aide assistance “occasionally throughout the day to keep on task.” The noncompliance did not prevent Student from progressing in the general curriculum in science.

IDEA envisions that IEP annual review will be completed by the end of the effective period of the IEP. Where development of a new IEP extends beyond the effective date, despite due diligence by the school to complete the annual review, the Department suggests development of an addendum to the “old” IEP, to maintain compliance. An addendum could recite those items of IEP content that the team has recently reviewed and agreed upon, leaving “old” content in place for items not yet agreed upon. Development and distribution of an addendum could also help ensure that regular education staff are aware of their responsibilities for IEP implementation at all times.

Conclusion 2 for Issue 2

The school failed to follow minimum IDEA procedural requirements for evaluation. The school initiated a reevaluation of Student in April 2002; conducted team meetings to discuss assessment data in August and September 2002; and developed an integrated written assessment report (IWAR) in November 2003. The IWAR relied in part on non-current assessment data, and it lacked documentation that educationally significant input from Student’s medical providers was considered by the evaluation team. The school was directed to state on the IEP that the last comprehensive evaluation was conducted in April 2002 rather than November 2003, in order to trigger Student’s next three-year reevaluation at an earlier time.

Corrective action

- Because Student was able to progress in science, corrective action consisted of training to review of IDEA precepts to reinforce team members' understanding of the IDEA process.
- The Department ordered the school to retain a date for the last comprehensive assessment so that the student's 3-year evaluation would occur "early" (April '05 instead of November '06)

Complaint 2

Issues

1. Failure to implement IEP.
2. Failure to report progress.
3. Failure to provide parent access.
4. Lack of content – IEP.
5. Lack of measurable goals - IEP

Conclusion 1 for Issue 1

The school failed to implement Student's IEP when it did not provide 500 minutes per week of special education services, as called for in the IEP. Student's IEP was due for annual review by mid-October 2003. The "old" IEP called for 500 minutes per week of special education services. In spring 2003 the IEP team decided Student would take regular education classes in 10th grade (2003-2004), and that Student's special education services would consist of having tests read to him and availability of the resource room when Student wants it. The IEP team met to develop a new IEP in September, October, November, and December 2003. The "new" IEP was completed in December 2003, more than two months past the annual renewal date. IDEA envisions that IEP revisions will be accomplished in a timely manner. Where the annual IEP revision will not be accomplished within the one-year timeline, the school may develop an interim IEP and give the parents prior written notice consistent with 34 CFR sec. 300.503 of the school's intent to provide services pursuant to the interim IEP while efforts to conclude the new IEP are ongoing. Use of an interim IEP would enable the school to remain in compliance with minimum IDEA requirements while development of the new IEP is evolving. If the school had developed and implemented an interim IEP effective 10/15/03, and had given prior written notice to the parents, the school would have remained in compliance.

Conclusion 2 for Issue 5

The school failed to provide Student with an IEP that stated measurable annual goals. Student's IEP contained one goal, which had no ending point and was not "annual" or "measurable" as required by 34 CFR sec. 300.347(a)(2).

Conclusion 3 for Issue 2

The school failed to develop and distribute a fall 2003 periodic progress report on Student's progress on his IEP goals and objectives. The parent was informed of Student's performance at IEP meetings held in September, October, and November 2003. This was the period of ongoing discussion to develop a new annual IEP. Student's program in 10th grade had changed so much that there was limited correlation between the goals and objectives in the "old" IEP and Student's 10th grade program. No corrective action was

directed, as there was no substantial adverse impact on Student and the primary case manager had demonstrated in the past that she knew the requirements for periodic progress reports.

Conclusion 4 for Issue3

The school was out of compliance where the parent requested a copy of the primary case manager's notes taken at an IEP meeting, and the school did not provide her the copy. The primary case manager's notes came within the definition of an "educational record" because they are related to the student; they are maintained by the school; and they were used by the team as part of the IEP process (thus not kept in the sole possession of the primary case manager).

Conclusion 5 for Issue 4

The parent alleged the IEP did not state student strengths. There was no violation of IDEA where the IEP stated at least 13 items of Student strengths.

Corrective actions

- The unit shall develop, adopt and implement a policy recognizing the use of interim IEPs where the process of annual review extends past the annual review date.
- In view of the difficulty experienced by this IEP team in developing the December 2003 IEP, the Department deferred directing the IEP team to reconvene to correct deficiencies in IEP content. Instead, the school was directed to report to the Department any revisions made to the IEP before the annual review due in December 2004. The school was also directed to report to the Department on activities in furtherance of transition because the Department had identified deficiencies in the IEPs transition content, and transition programming had been a significant point of discussion in the IEP revision process.
- Unit and school special education staff were directed to review federal requirements for parent access to student educational records.

Complaint 3

Issues

1. Failure to notify joint custodial parent.
2. Development of IEP without parental consent.

Conclusion for Issues 1 and 2

There was no violation of IDEA where the school evaluated Student for eligibility without notice to or consent by Student's mother. Similarly, there was no violation where the school conducted a meeting that resulted in development of an IEP for Student without notice to and participation by Student's mother.

Comments: Student's mother and father were divorced. The school had no knowledge or notice of the divorce. The school had no information regarding the mother's whereabouts. Student's father requested and consented to the evaluation and to initial placement in special education services. The divorce judgment submitted for the investigation state that the parents have joint physical and legal custody of Student. The Department concluded, based on the text of the federal regulations implementing IDEA and on its experience

in applying the regulations as a whole, that IDEA regulations do not expressly contemplate the possibility that parents may be divorced, except in addressing rights of access to a student's educational records (34 CFR sec. 300.562(c)). A leading commentator on IDEA observes,

Neither the IDEA nor its regulations specifically address the educational rights of divorced parents, a complex issue that involves the intersection of federal education law and state family and education law.

Susan Gorn, The Answer Book on Special Education Law, 3rd Edition, LRP Publications (1999) at 7:4. IDEA does not obligate a school to inquire about adjudications of parental rights. When a child is presented by a parent for evaluation, school staff are not obligated by IDEA to ferret out information about the "other" parent. This is not a case where the school should have known how to contact the "other" parent. There being no express obligation set out in the IDEA statute or regulations, the Department applied the test of reasonableness of the school's actions. Here, school and unit staff acted reasonably by proceeding with evaluation based on information supplied by the father and paternal grandmother. If the father's presentation of the child for evaluation and special education services without the mother's involvement is a violation of the parents' divorce decree, the proper body to give the mother redress is the district court. School district policy applicable to all children will govern the actions of school staff when the school has been notified that parental authority to make educational decisions and parental rights to be notified are affected by court order. This is a general education issue. The Department suggested incorporating language in the divorce decree that would specify parental authority to make educational decisions and who will have the final say if there is a disagreement.

Complaint 4

Issues

1. Failure to notify parents.
2. Failure to provide services during school removal.
3. Failure to follow procedures for a hearing.
4. Failure to follow procedures for placement.

Conclusion 1 for Issue 1

There was a violation where the school failed to notify the parents of procedural safeguards at required junctures in the disciplinary removal process. Student was a 10th grader whose educational program called for 63% of his time in the regular education setting and 37% in a resource room. Student was given an 8 day out of school suspension after an incident involving alleged sexual assault on school property. The principal and parent agreed that Student would stay home for what school staff and parents believed would be a short period, pending receipt of the results of a psychological evaluation. Time went by, the psychological report was not forthcoming, and Student remained out of school for 25 school days. Student's IEP remained unchanged. There was a change of placement, which required notice and procedural safeguards.

Conclusion 2 for Issue 2

The school failed to provide special education and related services during the period of disciplinary removal that extended to 25 school days. Student went from 600 minutes per week in the resource room with the special education teacher to phone contacts and no in-person minutes per week for a period of 25 school days. The opportunity to self-refer to the resource room during regular education study hall 3 periods per week was eliminated during that period.

Conclusion 3 for Issue 3

The school had a duty to conduct a manifestation determination. The duty was triggered on the 11th day of Student's removal. It was the principal's understanding that the manifestation determination requirement did not apply to Student since the suspension was only for eight days. Here, it was the change of placement after the suspension that triggered the need for a manifestation determination. 34 CFR sec. 300.523.

Conclusion 4 for Issue 4

The IEP team met approximately two months after the incident that caused the out of school suspension and changed Student's placement to a self-contained program at a site off school property. This was a violation because IDEA permits changes of placement only through the IEP process. Here, Student's placement was changed without participation of the IEP team. Beginning on the 10th school day that Student was not in the educational placement called for in his IEP, the school had a duty to convene the IEP team, even though the psychologist's report had not been received.

Corrective actions for Issues 1-4

- Reconvene a team to do a manifestation determination review, conduct a functional behavior assessment, and reconsider Student's educational placement.
- Conduct training on disciplinary removal procedural requirements and procedural safeguards.

Complaint 5

Issues

1. Failure to provide prior notice.
2. Failure to implement IEP.
3. Failure to provide access to records.
4. Denial of independent evaluation.
5. Failure to obtain consent
6. Failure to comply with minimum IDEA requirements for evaluation.
7. Failure to comply with minimum IDEA requirements for parent involvement.

Conclusion 1 for Issue 1

There was no violation of IDEA meeting notice requirements. The complainant alleged he did not receive written notice of an IEP meeting. School special education staff spoke with the parent about scheduling the meeting, prepared a written notice, and mailed the written notice. The complainant attended the meeting. No violation.

Conclusion 2 for Issue 6

There was a violation of IDEA procedures for evaluation prior to dismissal from services. The team concluded from its review of existing data that no additional data was needed, and that Student's continued eligibility or noneligibility could be determined on the basis of existing data. The unit was out of compliance for not preparing an integrated written assessment report documenting the team's conclusions regarding eligibility and for not notifying the parents of 1) the determination that no additional data are needed and the reasons for it; and 2) the parents' right to request an assessment to determine whether their child continues to be a child with a

disability. The complainant's allegation of bias on the part of the speech language pathologist was not supported by the record of the process by which Student was dismissed from services.

Conclusion 3 for Issue 2

The school was out of compliance by failing to implement Student's IEP to the extent of three or four (evidence inconclusive) twenty-minute sessions of speech-language services. The failure to provide the three or four sessions had no apparent harmful effect on Student, who was eventually found ineligible for special education. Corrective action directed pursuant to Issue 6 addressed the noncompliance found on Issue 2.

Conclusion 4 for Issue 3

There was no violation of requirements for access to educational records where the father requested copies of a document from the special education unit director, and the document did not exist. The nonexistent document was a parental consent form that was not executed.

Conclusion 5 for Issue 4

The unit did not respond to the parent's request for an independent educational evaluation by either agreeing to pay for an independent evaluation or by initiating due process proceedings to show the adequacy of the school's evaluation. The unit's lack of response was not a violation of IDEA requirements for independent educational evaluations because the fact situation did not give rise to a parental right to request an independent educational evaluation. There was no school evaluation with which the parent could disagree, due to the failure to develop an IWAR, as discussed above in conclusion 2.

Conclusion 6 for Issue 5

The father alleged the unit violated IDEA by failing to obtain his consent for Student to be reevaluated. The unit obtained the mother's consent to the reevaluation. Father and mother are divorced. The mother had joint physical and legal custody of Student, which conferred on her the authority to act pursuant to IDEA.

Conclusion 7 for Issue 7

There was a violation of IDEA requirements for parent participation and a parental invitation to a third party to attend an IEP meeting. The father attended a meeting accompanied by his attorney. Under 34 CFR sec. 300.344(a)(6), a parent may invite other individuals who have knowledge or special expertise regarding the child. Under 34 CFR sec. 300.344(c), the determination of the knowledge or special expertise of any individual invited shall be made by the party who invited the individual. This section places all authority for the determination of knowledge or special expertise in the inviting party. There is no basis for the Department to determine that the father's attorney is not a person with knowledge or special expertise regarding the child. The Department noted, however, that the resulting situation is not viewed favorably by IDEA. The presence of attorneys at meetings is frowned upon because their presence detracts from focus on the child, who is properly the center of attention, and contributes to an adversarial atmosphere inconsistent with IDEA's model of decision-making on a consensual basis.

Corrective action for Issues 1-7

- The unit shall review its policies and forms for evaluation procedures, with specific attention to procedures for reviewing existing evaluation data and section 533(d) procedural requirements, preparation of the IWAR, dismissal from services, and membership of the IEP team.

Complaint 6

Issue

1. Failure to implement IEP (accommodation)

Conclusion

The school and unit had implemented Student's IEP and had documented that implementation extensively; therefore the Department determined there was no violation. The parent was unaware of the school's documentation of its implementation. The parent had kept her own tracking system of implementation, which she based on her observations and on reports from the student. The situation presented, though not an IDEA violation, was a lack of communication leading to differing conclusions among team members about the appropriateness of Student's educational program. IDEA envisions more extensive and more frequent communication between school and home, in order to best serve Student.

Complaint 7

Issue

1. Failure to evaluate all areas related to disability.

Conclusion

There was a violation where the school failed to assess Student in all areas related to the suspected disability, including behavior. The evaluation lacked documentation that the evaluation team had considered all relevant information. In her letter to the school requesting an evaluation for special education, the parent wrote that her son's behavior difficulties at school had increased, affecting his educational performance. School personnel did not see behavior difficulties interfering with learning. Thus evaluation team members had different views of the relationship between Student's behavior and learning. The evaluation did not develop relevant information about behavior that would lead to team consensus on that relationship. Also, the integrated written assessment report did not convey meaningful information reflecting a "full and individual evaluation" as required by IDEA.

Corrective action

- Several factors affected the Department's determination of appropriate corrective action. Student and his family had moved out of the district. The unit had recently conducted staff development training on integrated written assessment reports. The Department directed the unit to conduct a self-monitoring of a sample of files and submit documentation demonstrating compliance with IDEA requirements for assessment planning and development of IWARs.

Complaint 8

Issues

1. Failure conduct manifestation determination
2. Denied FAPE-failure to write appropriate goals and objectives or a PBI plan in IEP when need was identified

Conclusion for Issues 1 and 2

There was no violation of IDEA requirements for conducting a manifestation determination, where Student had not been removed from his educational setting for more than 10 school days in one school year. The school was out of compliance by not addressing in the written IEP the identified need for developing goals and objectives and other positive behavior supports to enable Student to progress toward compliant behavior. The Department commended the IEP team for meeting frequently to revise Student's IEP. The revisions were well documented by an IEP addendum for each meeting. The student, the parent, and the school did not share a common concept of the purpose and scope of a positive behavior intervention plan.

Corrective action

- The Department directed to school to reconvene the IEP team with a neutral facilitator to revise the IEP to address lack of flow of information within the IEP document, i.e. from needs identified in present levels, to goals and objectives and subsequently to the services section; and to address positive components of a behavior intervention plan.

Complaint 9

Issues

1. Failure to provide same access to participate as non-disabled peers.
2. Failure to develop Positive Behavior plan.
3. Failure to write appropriate goals.

Conclusion 1 for Issue 1

There was no violation where the alleged action is a proposal that was not adopted or implemented. The school's proposal regarding Student's participation in a field trip scheduled for fall 2004 was presented to the parents and discussed at an IEP meeting but no consensus was reached. There would be time for further discussion of Student's participation in the field trip at an IEP meeting to be held at or near the beginning of the school year, as directed by the Department in connection with another issue in this complaint.

Conclusion 2 for Issue 2

There was no violation where the parents objected to IEP content that the school proposed and the school acquiesced in the parents' objection. The IEP team discussed possible content of a positive behavior intervention plan at an IEP meeting. One parent left the meeting early and the other parent remained. School staff believed the remaining parent agreed to a plan. According to the remaining parent, this was a misunderstanding of the parent's statement at the meeting. Later the same day, the other parent faxed the school a statement that the parents would not agree to any part of the plan now or at any time in the future. The primary case manager made a notation on the written plan document, "Plan was not implemented as requested by parents." The facts thus established that the plan was not implemented, therefore the parents' claim that the school had implemented IEP content over their objection was not supported. It was not necessary to reach the question, "is it a violation of IDEA for the school to implement IEP content to which the parents object"?

Conclusion 3 for Issue 3

There was a violation of minimum IDEA requirements for goals and objectives where the school carried over goals and objectives from the previous IEP. The 2003-2004 school year was Student's first year in middle school. The IEP in effect for Student's entire 7th

grade year contained goals and objectives written in 6th grade, when Student was in elementary school. The goals are deficient because they are not measurable or annual. The IEP team met to conduct the annual IEP review. At the end of the school year, the IEP team had met three times and had completed the present levels section of the “new” IEP. The IEP taken as a whole contained large amounts of out-of-date material. It was the primary case manager’s understanding that the parents had agreed to postpone the rewriting of the goals and objectives until fall 2004, when Student’s teachers for 2004-2005 would have been assigned. IDEA requires annual review to determine whether the annual goals are being achieved. Another noncompliance had occurred earlier when the IEP was not revised to reflect changes in Student’s program that occurred when he started middle school and after an evaluation was conducted in fall 2003.

Corrective Actions for Issue 3

- Reconvene the IEP team to develop a revised IEP.
- Conduct a self-monitoring assessment to determine whether deficiencies in IEP content are limited to this student.
- Conduct staff training on IDEA requirements for content of goals and objectives.

What We’ve Learned....

- The protracted IEP review. Three complaints involved situations where the IEP annual review was not completed within the one-year time frame (34 CFR sec. 300.343 (c)) and eventually extended months beyond the IEP anniversary date. In one case, the Department directed the unit to adopt and implement a policy recognizing the use of an interim IEP in some circumstances. The unit’s policy is stated below for reference by other units:

Example: Unit will develop an interim IEP under the following circumstances...

- In cases of a student having an existing IEP and when the Unit cannot finalize an annual IEP within IDEA guideline dates:
 - The Unit must ensure that the student has an IEP in effect so that the Unit can provide special education and related services. The Unit will meet this responsibility by developing an Interim IEP as agreed to by both the parents and the Unit. Participants in the Interim IEP will follow regulations as for an annual IEP.
 - Parents will be sent a copy of Procedural Safeguards in Special Education for Children and Parents and a Prior Notice form. Parents will be given a copy of Procedural Safeguards in Special Education for Children and Parents and will have it explained to them at the time of the Interim IEP.
 - The Unit has ultimate responsibility to ensure that the Interim IEP includes the services that the student needs in order to receive FAPE.
 - If the team cannot reach consensus for the substance of the Interim IEP, the Unit must provide the parents with prior written notice of the Unit’s proposals or refusals, or both, regarding the student’s educational program. The student’s parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing.
 - An Interim IEP will be written and documented on an IEP Addendum.
- The issue that arose most frequently this year was failure to implement the IEP (complaints 1, 2, 4, 5, 6). In one case where the Department found a violation on implementation in the regular education classroom, the primary case manager developed a detailed tracking system for documenting implementation in each class. The tracking system was intrinsically valuable for its

data on Student performance. The tracking system also proved useful when the parent filed a second complaint alleging non-implementation and the school was able to produce documentation of its implementation activities.

- Another example of how the complaint investigation process can play out in the bigger picture of improving services for students: A complaint investigation disclosed that Student's integrated written assessment report (IWAR) was deficient. The Department directed the unit to conduct a self-monitoring by sampling other files to determine whether the deficient IWAR was an isolated instance—everybody can have a bad day—or an example of a systemic deficiency. The sampling indicated the deficiency was not an isolated instance. The unit has undertaken additional corrective actions, including changing its forms and providing training, that will result in improved evaluations for all students.
- Unit directors still ask, is the complaint investigation a fishing expedition? We all live in a fishbowl. At both state and local levels, agencies must be prepared to demonstrate compliance with federal regulations. The Department looks at all relevant information in order to determine whether there has been a violation. We start with the scope presented by the complainant: what is the complainant alleging? Who has information? What documents have information? If information comes to our attention that makes it reasonable to look farther, then we do. Once the Department is aware of noncompliance, the Department has a duty to see that compliance is restored. When the noncompliance is on a point not raised by the complainant, the Department writes a separate letter to the unit director identifying the noncompliance and directing corrective action. It may be helpful to keep in mind that a complaint investigation is like an audit: the LEA has the duty to show that its program complies with federal regulations.
- Case managers should develop proper documentation procedures for documenting dates and information sent relative to IEPs and IEP progress reports.

Point(s) of Interest

- Anyone can file a complaint. You don't have to be a parent to file a complaint. The only restriction on subject matter is that the complaint must allege a violation of IDEA Part B. The complaint investigation process is the most widely accessible of the three dispute resolution tracks available under IDEA, both in terms of who can file and what they can file about. The price is right: the process is free. At the same time, the Department has encouraged and continues to encourage persons to try to resolve their issues at the local level. To that end, the Department adopted a pilot policy in early 2004, which it is in the process of refining and fleshing out. The gist is that when a formal complaint is received by the Department, and
 - The Department has received a formal complaint involving the same or substantially the same parties within the preceding twelve months, and;
 - The Department has identified in a prior complaint investigation report involving the same or substantially the same parties that lack of communication is a significant factor, it is the Department's policy that the parties shall discuss their differences in an effort to resolve the subject of the complaint at the local level before complaint investigation activities are commenced. The time period during which local level discussions occur will be included in the sixty calendar days allotted by federal regulation 34 CFR sec. 300.661 for completion of the complaint investigation.

- We initiated a new practice starting in fall 2003 of sending the document “What To Expect in the Complaint Investigation Process” with the initial letter opening the formal complaint. This letter goes to the complainant, the building principal, the superintendent, and the unit director. Our intent was to give people more information right away about the complaint investigation process, to reduce anxiety.

